

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, )  
                                  )  
Plaintiff,                 )                                   Case No. 8:10CR169  
                                  )  
v.                            )  
                                  )  
THOMAS J. HERINK,         )                                   **FINDINGS AND RECOMMENDATION  
AND ORDER**  
                                  )  
Defendant.                 )

At the conclusion of the hearing on January 4, 2011, on defendant's Motion for Dismissal of Counts, 12, 13 and 14 on the Grounds of Multiplicity or Alternatively For Consolidation of Counts 12, 13 and 14 (#32) and defendant's Motion to Suppress Statements (#36). I stated my conclusions on the record and my decision:

**A. Motion for Dismissal of Counts 12, 13 and 14 on the Grounds of Multiplicity or Alternatively For Consolidation of Counts 12, 13 and 14 (#32)**

**IT IS ORDERED:**

1. The Motion for Dismissal of Counts 12, 13 and 14 on the Grounds of Multiplicity or Alternatively For Consolidation of Counts 12, 13 and 14 (#32) is denied as to dismissal and granted as to consolidation. The court finds that Count 12, Bank Fraud, is multiplicitous with Counts 13 and 14, False Statement to a Bank.
2. The government has fourteen days to elect consolidation.
3. A party may object to a magistrate judge's order by filing an "Objection to Magistrate Judge's Order" within 14 days after being served with the order. The objecting party must comply with all requirements of NECrimR 59.2.

**B. Motion to Suppress Statements (#36)**

For the reasons set out on the record,

**IT IS RECOMMENDED** to the Honorable Chief Judge Joseph F. Bataillon, United States District Court of Nebraska, that the Motion to Suppress Statements (#36) be denied in all respects.

**FURTHER, IT IS ORDERED:**

1. The clerk shall cause a transcript of the hearing to be prepared and filed.

2. Pursuant to NECrimR 59.2, any objection to the magistrate's Findings and Recommendation shall be filed with the Clerk of the Court within fourteen (14) days after the unredacted transcript is available to counsel. Failure to timely object may constitute a waiver of any such objection. The brief in support of any objection shall be filed at the time of filing such objection. Failure to file a brief in support of any objection may be deemed an abandonment of the objection.

Dated this 4th day of January, 2011.

BY THE COURT:

s/ F.A. Gossett, III  
United States Magistrate Judge